

DETAILED ACTION***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's Amendments and Accompanying Remarks filed on November 16, 2009 has been entered and carefully considered. Claim 1 is amended, claims 2 – 3 and 8 – 15 are cancelled and claims 1 and 4 - 7 are pending. After an updated search, the Examiner has found art which better represents the claimed invention, therefore, the previously applied rejection over Forbes et al. has been withdrawn. The invention as currently claimed is not found to be patentable for reasons herein below.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102/103

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 1794

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 and 4 – 7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hisada et al. (EP 1,039,007 A1).

Hisada et al. is directed to a conjugate fiber nonwoven fabric having excellent softness and high strength (Abstract).

Hisada et al. teach in Example 5 a concentric core-sheath conjugate fiber having a core:sheath ratio of 20:80 was melt spun by using a propylene-ethylene random copolymer having a MFR of 60 g/10 mins for the core and an ethylene-based polymer having a MFR of 30 g/10 mins for the sheath. The concentric core-sheath fiber was deposited onto a collection surface to produce a spunbonded fabric. Hisada et al. does not mention that the fiber is crimped or crimpable. The fabric was then laminated to a meltblown nonwoven fabric to create a nonwoven laminate [0062]. Hisada et al. teach that the nonwoven fabrics can be used in a variety of applications including disposable diapers [0063]. The Examiner submits that the propylene-ethylene copolymer for the core would be of the same kind as the ethylene-based polymer for the sheath, as both components have an ethylene component. As to claim 5, the Examiner submits

that the core material of a propylene-ethylene random copolymer meets Applicant's limitations; it should be noted that the claim does not require that both olefin-based polymers are propylene-based polymers.

Hisada et al. teach the claimed invention but fail to teach that the two olefin-based polymers have a difference between induction periods of strain-induced crystallization as measured at the same temperature and the same shear strain rate, of 100 second or longer as required by claim 1 and fail to teach the extensibility at a maximum load of not less than 70% in the MD and/or CD direction as required by claim 4. It is reasonable to presume that the difference between induction periods and extensibility is inherent to Hisada et al. Support for said presumption is found in the use of like materials (i.e. a spunbonded fabric comprising concentric sheath-core composite fibers where sheath has a lower melt flow rate than the core, the core:sheath ratio is 20:80 and no discussion of crimps in the fibers) which would result in the claimed properties. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed properties would obviously have been present once the Hisada et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977).

Response to Arguments

5. Applicant's arguments with respect to claims 1 and 4 - 7 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER A. CRISS whose telephone number is (571)272-7783. The examiner can normally be reached on Monday - Friday, 8:30 a.m. - 6 p.m., first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Tarazano can be reached on 571-272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. A. C./

/Jennifer A Chriss/
Primary Examiner, Art Unit 1794

